

REMARKS

**Applicants thank the Examiner for the consideration given the present application. Claims 1-21 have been cancelled. Claims 22-35 have been added. Claims 22-35 are pending in the present application.**

Specifically, Claim 22 discloses the method of the present invention. Support for Claim 22 is found in the Specification at page 27, lines 20-26.

Claim 23 lists possible coffee source components, which together, make up a coffee source component profile for an aged coffee. Support for Claim 23 is found in the Specification at page 7, lines 10-28, page 9, lines 10-11 and page 27, line 23.

Claim 24 lists possible target coffee components, which together make up a target coffee component profile of a non-aged coffee. Support for Claim 24 is found in the Specification at page 10, line 19 through page 11, line 10.

Claim 25 teaches how the coffee source components may be altered. Support for Claim 25 is found in the Specification at page 30, line 28 through page 31, line 28.

Claim 26 lists possible supplemental coffee source components, which are supported in the Specification at page 13, lines 20-28.

Claim 27 lists possible coffee source component modifiers. Support for Claim 27 is found in the Specification at page 5, lines 5-11.

Claim 28 teaches the use of at least two agents to alter the coffee source component profile of the aged coffee source. Support for Claim 28 is found at page 20, lines 1-5.

Claim 29 teaches identifying the target coffee component profile of the non-aged target coffee by measuring at least three target coffee components. Support for Claim 29 is found in the Specification at page 10, line 19 through page 11, line 10, and also in Examples 2-7.

Claim 30 teaches further adjustment of the pH of the composition. Support for Claim 30 is found in the Specification at page 22, lines 15-20.

Claim 31 discloses a pH range of the composition, which is found in the Specification at page 22, lines 7-14.

Claim 32 teaches using at least three agents to alter the coffee source component profile of the aged coffee source. Support for Claim 32 is found in the Specification at page 20, lines 1-5.

Claim 33 discloses the relation of the principal and relevant acids of the aged coffee source and the non-aged target coffee. Support for Claim 33 is found in the Specification at page 21, lines 13-29 and page 23, lines 8-27.

Claim 34 teaches another range relation between the principal and relevant acids of the aged coffee source to the non-aged target coffee. Support for Claim 34 is found in the Specification at page 21, lines 26-27.

Claim 35 discloses a coffee beverage composition having enhanced stability. Support for Claim 35 is found in the Specification at page 1, lines 16-18 and page 30, line 1 through page 33, line 2.

#### Synopsis of the Invention

Once a coffee is in liquid form, either by brewing, extracting, or other similar processes, it begins to undergo an aging process, which typically imparts a bitter and/or sour taste to the coffee. It is believed that this flavor change is attributed to a variety of factors, including hydrolysis of celluloses contained within the coffee; oxidation of aldehydes to acids; hydrolysis of chlorogenic acids to caffeic and quinic acids; and conversion of quinic acid lactones to quinic acid.

More specifically, it is believed by Applicants that as additional quantities of the acidic species existing in coffee prior to aging are generated, and/or additional acidic species not present prior to aging are generated, the associated flavor notes of these acids come to dominate the overall flavor profile of the coffee. The exact nature and extent of the change in a flavor profile resulting from the aging process depends on several factors, including duration of aging, temperature of aging, initial pH, and the identity and quantity of the additional acidic species generated.

The Applicants have discovered that it is possible to overcome the dispreferred flavor effects of the aging process employing processes whereby the profile of an aged coffee (i.e., a coffee source) is adjusted to approximate or mimic the profile of a corresponding, non-aged coffee (i.e., a target coffee). It has also been discovered that the profile of an aged coffee may be adjusted so as to approximate or mimic the profile of a non-corresponding coffee as well.

#### *The Rejection under 35 U.S.C. § 102*

The Examiner has rejected Claims 1-6, 8, 10-14, 16, 18 and 19 under 35 U.S.C §102 as being anticipated by any one of German 3710768, JP 11-32680 or JP 3-133368. Claims 1-5, 7, 10-13, 15, 18 and 19 are rejected as anticipated by each of Bach, US Patent 3,625,292; Zeller, US Patent 6,399,131; Atkinson, US Patent 6,207,203; and Villagran, US Patent 6,048,567. Finally, Claims 1-5, 8, 10-13, 16, 18 and 19 are rejected as anticipated by Lendrich, US Patent 1,822,227.

Even though different claim groupings are rejected using different references, the crux of the Examiner's argument is the same for each reference. Namely, the Examiner states that each of the references disclose a coffee source (such as roast and ground or soluble coffee) that

comprises a coffee source component modifier (i.e. an acid) and a supplemental coffee source component (e.g. sodium or vitamins). Additionally, the Examiner states that each reference directly or inherently teaches a coffee extract and/or beverage. The Examiner concludes by stating that because such compositions would inherently be desired, such compositions would be considered "target" coffees. For similar reasons, the Examiner concludes that such "target" coffees would fall within the presently claimed pH ranges.

Applicants respectfully assert that in view of the present amendments to the Claims, the rejection of Claims 1-19 under §102 is moot. However, to fully address the Examiner's rejection, Applicants respectfully traverse the anticipation rejections of the present Claims for the following reasons.

Under 35 U.S.C. § 102, a claim is anticipated only if each and every claim is found, either expressly or inherently disclosed, in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. See *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 43 USPQ2d 1481, 1490 (Fed. Cir. 1997). Additionally, there must be no difference between what is claimed and what is disclosed in the applied reference. See *Scripps v. Genetech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Applicants respectfully assert that the cited references fail to anticipate the present claims, as amended herein. As presently claimed, the invention is directed to methods of making coffee beverage compositions having enhanced stability, and compositions thereof. Applicants respectfully assert that none of the cited references teach the process or the compositions of the present invention. Specifically, none of the references teach identifying a coffee source component profile of an aged coffee source or a target coffee component profile of a non-aged target coffee. Similarly, neither reference teaches altering the coffee source component profile of the aged coffee source to mimic the profile of the non-aged target coffee. In contrast, the foregoing references merely discuss adding ingredients, such as calcium and acids, to coffee. These limited disclosures of the references in no way anticipate the present invention, which teaches a method of enhancing the stability coffee beverage compositions by altering the coffee source component profile to mimic the target coffee component profile, as claimed herein. In view of the foregoing, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 102.

*The Rejection under 35 U.S.C. § 103*

The Examiner has rejected Claims 1-21 under 35 U.S.C. § 103 as being unpatentable over the following references: Claims 1-5, 8, 10-13, 16, 18 and 19 over Lendrich; 1-6, 8, 10-14, 16, 18 and 19 over any one of German 3710768, JP 11-32680 and JP 3-133368; Claims 1-5, 7, 10-13, 15, 18 and 19 over Bach; Claims 1-5, 7, 10-13, 15, 18 and 19 over any one of Zeller, Atkinson and Villagran; and Claims 9, 17, 20 and 21 over any one of the previous rejections found on Paragraphs 2-5 and 7-10 of the Office Action, taken with Dar, US Patent No. 4540591.

In the rejection under §103, for each reference, or combination of references, the Examiner states that if it is shown that the references do not teach what the Examiner claims they teach in the rejections under §102, then those teachings would be obvious variations of what the references do, in fact, teach. It is on this basis alone that the Examiner has rejected the Claims under § 103. Again, Applicants respectfully assert that in view of the present amendments, the Examiner's rejection of Claims 1-21 is now moot. However, to fully address the Examiner's comments, Applicants respectfully traverse the rejection under §103.

The Examiner bears the burden of factually supporting any prima facie conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530 (Fe. Cir. 1983). Distilling the invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." See W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). Inventors of unobvious compositions, such as those of the present invention, enjoy a *presumption* of non-obviousness, which must then be overcome by the Examiner establishing a case of prima facie obviousness by the appropriate standard. If the Examiner does not prove a prima facie case of unpatentability, then without more, the Applicant is entitled to grant of the patent. See In re Oetiker, 977 F.2d 1443.

To establish a prima facie case of obviousness under 35 U.S.C. §103, the Examiner must meet three basic criteria. First, there must be some suggestion or motivation, either in the reference itself, or in the knowledge generally available to one of

ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the cited reference must teach or suggest *all* the claim limitations. See, for example, In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991). Applicants respectfully assert that the Office Action fails to establish any of these criteria, and thus, fails to make a prima facie case of obviousness under 35 U.S.C. § 103. Additionally, Applicants respectfully assert that in view of the amendments herein, the rejection of Claims 1-14 is now moot.

First, there is no suggestion or motivation to modify the references. Applicants respectfully assert that the Examiner has mischaracterized the present method, and thus, erroneously concludes that the cited references provide the necessary motivation for modification when in fact, the references fail to provide such motivation. Specifically, the Examiner errs by viewing the present invention as a simple addition of acids and other components. Applicants respectfully assert that the present invention is much more than this. Indeed, the present method provides for controlled manipulation of coffee source and supplemental source components to enhance the stability of a coffee beverage composition.

Additionally, there is no suggestion or motivation to modify or combine the references as none of the references teach that coffee stability may be enhanced by the manipulation of acids and like agents. Rather, the references teach adding many ingredients, such as calcium and sodium, to gain such effects as reduced acidity, or self-whitening. Applicants respectfully assert that there is a distinct difference between the foregoing and selectively altering the level of particular acid components in a coffee product. Indeed, the present process actually enhances stability and improves the taste of aged coffees. For these reasons alone, Applicants respectfully assert that a prima facie case of obviousness has not been established.

Second, there is no reasonable expectation of success. As aforementioned, none of the references teach the use of coffee profiles to enhance the stability of coffee beverages. Simply adding random acids and other like ingredients into a coffee beverage will not produce the present enhanced compositions. Only calculated manipulation of specific acids found in measured coffee profiles will provide the presently desired results. As there is no suggestion in any cited reference that coffee profiles can even be used for such a purpose as stability enhancement and mimicking, Applicants respectfully assert

that the references fail to provide any likelihood of success. For this additional reason, Applicants respectfully assert that a prima facie case of obviousness has not been established.

Finally, there is no teaching of all the claim limitations. As stated previously, there is no teaching in any reference of the notion of identifying a coffee source component profile of an aged coffee source, or target coffee component profile of a non-aged target coffee. Nor is there mention of using such profiles to enhance the stability of the coffee source. As there is no teaching of such methods, there is likewise no teaching of compositions made in accordance to these methods. Therefore, as there is not a teaching of all the claim limitations, Applicants respectfully assert that for this final reason, a prima facie case of obviousness has not been established.

Findings of fact relied upon in making the obviousness rejection must be supported by substantial evidence within the record. See In re Gartside, 203 F.3d 1305, 1315 (Fed. Cir. 2000). Applicants respectfully assert that, for all of the above reasons, the Examiner has failed to support the obviousness rejection with substantial evidence, and thus, has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103. Therefore, Applicants respectfully request the rejection under 35 U.S.C. § 103 be withdrawn.

#### *The Double Patenting Rejection*

Claims 1-3, 6-11 and 14-17 have been provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of Claims 1-13 of co-pending Application No. 10/074851. In a sincere effort to advance prosecution of this case, Claims 1-3, 6-11 and 14-17 have been cancelled herein and new Claims 22-35 have been added. Additionally, Application No. 10/074851 will be abandoned. Therefore, Applicants respectfully request the provisional statutory double patenting rejection be withdrawn.

Claims 1-21 have also been provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as Claims 1-21 of Application No. 10/074850. Applicants respectfully submit that the aforementioned Application No. 10/074850 is, in fact, the present Application. As the present application cannot be rejected over itself, Applicants respectfully request withdrawal of this statutory double patenting rejection.

Claims 4,5,12 and 13 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting for being unpatentable over claims 1-13 of co-pending Application No. 10/074851, which, as aforementioned, will be abandoned. Therefore, Applicants respectfully ask for withdrawal of the foregoing obviousness-type double patenting rejection.

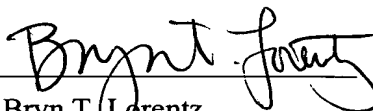
Claims 1-17 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting for being unpatentable over claims 1-9 and 11 of co-pending Application No. 10/077325. Applicants respectfully request that in view of the amendments herein, the rejection be withdrawn with respect to this Application.

Finally, Claims 1-17 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of co-pending Application No. 10/074822. Applicants respectfully assert that Application No. 10/074822 stands abandoned, and thus, is no longer co-pending. Therefore, Applicants have elected not to address this application. If the Examiner disagrees with Applicants decision, personal contact is respectfully requested.

### CONCLUSION

In view of the foregoing, it is respectfully submitted that the Examiner's rejections under 35 U.S.C. §§ 102, 103 and the Double Patenting Rejections, have all been overcome. Withdrawal of these rejections is respectfully requested.

Respectfully submitted,

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